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DELL'OSSO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GEORGE E. BARICH and LAURIE
ALDERMAN,

Plaintiffs,

v.

CITY OF COTATI and JOHN A.
DELL'OSSO,

Defendants.

) Case No. 21-cv-00034-EMC

)

)

) **REQUEST FOR JUDICIAL NOTICE IN**
) **SUPPORT OF DEFENDANTS' MOTION TO**
) **DISMISS, STRIKE, AND FOR MORE**
) **DEFINITE STATEMENT OF COMPLAINT**

)

)

) Date: March 25, 2021

) Time: 1:30 p.m.

) Location: Courtroom 5/Zoom

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Defendants, by and through their attorneys, hereby request the Court to take judicial notice pursuant to Federal Rule of Evidence 201 of the following:

1. A true and correct recording of the official video of the City of Cotati's January 8, 2019 City Council meeting, and minutes of that meeting, which can be viewed at the following link:

http://cotaticityca.iqm2.com/Citizens/Detail_Meeting.aspx?ID=2091

Particularly, at approximately 26:30 in the video, Plaintiff Alderman makes her presentation to the Council.

2. A true and correct recording of the official video of the City of Cotati's January 22, 2019 City Council meeting, and minutes of that meeting, which can be viewed at the following link:

http://cotaticityca.iqm2.com/Citizens/Detail_Meeting.aspx?ID=2092

Particularly, at approximately 1:40:00 in the video, and again at 1:50:30.

3. A true and correct copy of the City of Cotati's City Council Policy 2017-02, which may be found at the City of Cotati's official website at:

<https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3Ae051e721-ea87-4620-ae19-a0ad36bd1cb3#pageNum=1>

Attached hereto as Exhibit A is a true and correct copy of the most pertinent portions of that document.

Dated: February 12, 2021

GIBBONS & CONLEY

By: /s/ Peter Urhausen

PETER URHAUSEN, ESQ.

Attorney for Defendant, CITY OF COTATI and
JOHN A. DELL'OSSO

EXHIBIT A

City of Cotati
City Council Policy No. 2017-02

Cotati City Council Rules

1. Policy

City Council Rules (see attached Resolution No. 2017-41)

H:\POLICIES AND PROCEDURES SOPS (CCLK)\Policy Log and Merge Documents\CCPolicyCoversheet Council Rules.docx	City Council Policy No. 2017-02 Cotati City Council Rules Adopted July 25, 2017 Resolution No. 2017-41
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up. A Councilmember who publicly announces that he/she is abstaining from voting on a particular matter may not subsequently withdraw his/her abstention.

L. Conflict of Interest

Any Councilmember who has a conflict of interest regarding any matter being considered by the Council shall declare the conflict, state the reason for the conflict, and leave the room during the discussion of that particular agenda item, unless it is a Consent Calendar item. A Councilmember stating disqualification will not be counted as a part of a quorum and will be considered absent for the purpose of determining the outcome of a vote on the matter.

M. Serial Meetings

A majority of the members of the City Council shall not, outside a meeting authorized by the Brown Act, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the City Council. Serial meetings yield a process which deprives the public the opportunity for a meaningful contribution to the decision-making process. However, an elected official may confer with a colleague about public business and engage in other conduct that does not constitute a “meeting” under the Brown Act.

IV. ADDRESSING THE CITY COUNCIL

While public comment is encouraged, under the law the Council has the right reasonably to regulate the time, place and manner of such comment. Any person desiring to address the Council at a meeting shall first be recognized by the Presiding Officer to do so.

A. Written Communications.

Interested persons or their authorized representative may address the Council by written communication on any matters concerning the City’s business, or any matters over which the Council has control.

1. To be considered for inclusion in the agenda packet, such written communication shall be delivered to the City Clerk no later than 11:00 a.m. of the Wednesday the week preceding the regular Council meeting for which such written communication is intended.
2. If received after the above date and time, but no later than noon the day before the meeting, written communications received by the City Clerk shall be posted on the website by the end of that day and notification provided to the electronic Agenda mailing list by the end of the day. All written communications received by the City Clerk by 5 pm on the City Council meeting day shall be made available to the City Council and public at the City Council meeting.
3. If provided during the City Council meeting, written communications shall be delivered to the City Clerk.

4. Any writings or documents subject to disclosure that are provided to all, or a majority of, the members of the City Council regarding any item on the agenda after the time and date above, but before City Council meeting, will be made available to the City Council and the public at the City Council meeting no later than the start of the public meeting.
5. Although all written communications will become part of the written meeting record, they will not be read into the record at the City Council meeting.

B. Closed Session

Public comment is only received at the start of closed session at the designated portion of the agenda. Closed sessions that are continued after the regular meeting do not have an additional public comment period. Public comment can only address the subject of the closed session.

C. Disability Accommodation

Any person with a disability who requires a modification or accommodation in order to participate in the meeting should contact the City Clerk at least 48 hours in advance of the meeting to ensure the requested accommodations can be made.

D. Councilmembers' Comments.

Councilmembers who are not able to attend a particular Council meeting may submit written comments on the agenda items. Councilmembers cannot give another member his/her proxy to vote, as the absent Councilmember is not present to consider reports and comments provided during the agenda item(s). The Councilmembers' written comments shall be submitted to the City Manager and/or City Clerk and distributed as soon as possible to the other Councilmembers, but no later than the start of the meeting. Councilmember comments will not be read into the record.

E. Speaker Cards

Persons wishing to speak are encouraged, but not required, to submit a speaker card to the City Clerk for any item(s). Speakers will be called by the Presiding Officer. Although not required, when called upon, the person should come to the podium, state his/her name and address for the record, and, if speaking for an organization or other group, identify the organization or group represented. Speaker cards may also be used as comment cards by members of the public who do not wish to or cannot verbally address the Council during a meeting. A person may indicate his/her comments and opposition or support for an agenda item on a speaker/comment card. During the public testimony of the item, the Presiding Officer will indicate that the Council has received comment cards from (name of person) in support of the project or issue and comment cards from (name of person) in opposition of the project or issue. The minutes will reflect the Council's receipt of comment cards in opposition and support of the project or issue.

Persons who do not wish to use speaker cards are required to provide comments at the start of public comment, prior to those who submitted comment cards. Persons who have not submitted comment cards must indicate an intention to provide public comment by raising their hands to obtain recognition from the Presiding Officer at the start of public comment.

F. Council Interaction with Public

All remarks shall be addressed to the Council as a body and not to any member thereof or to the audience. No person, other than the Council and person having the floor, shall be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the Presiding Officer. No questions shall be asked of a Councilmember or staff except through the Presiding Officer. The Presiding Officer will determine whether, or in what manner, an answer will be provided. If a Councilmember believes that a material misstatement of fact has been made by a person, the Councilmember may ask the City Manager or City Attorney to correct or otherwise clarify the matter or the Councilmember may provide a direct response at that time without interrupting the speaker. The Mayor may also direct the questions to the City Manager to be handled either at the Council meeting or outside of the meeting. After a motion is made by the Council, no person shall address the Council without first securing the permission of the Presiding Officer to do so.

G. Time Allocation for Public Comment and Presentations

1. Public Comment (Action Items): To ensure full access for any public wishing to speak, and to maintain a timely and efficient meeting, public comment on any one agenda item where the City Council will be taking some action is limited to no more than three (3) minutes per person. To avoid requiring the public to make multiple trips to the speakers podium, public comment on the Consent Calendar shall be received during Citizen's Business, and shall be an additional three (3) minute comment period per person in total for any and all items on the Consent Calendar. The following agenda items are action items:
 - i. APPROVAL OF MINUTES AND NOTICE OF WAIVING READING
 - ii. APPROVAL OF FINAL AGENDA
 - iii. CONSENT CALENDAR
 - iv. PUBLIC HEARINGS
 - v. REGULAR AGENDA
 - vi. REORGANIZATION OF THE CITY COUNCIL (AS NEEDED)
2. Public Comment (Non-Action Items): Public comment on other non-action agenda items shall be received during the designated portion of the agenda. Comments shall be limited to no more than three (3) minutes for all non-action agenda items.

3. Presentations: Presentations, appropriately calendared in accordance with the procedures herein, will be limited to a time period not to exceed 15 minutes (including questions) for all presentations at each Council meeting, unless agreed upon in advance with the City Manager. The Presiding Officer may allow presentations by an applicant or appellant in a Public Hearing to be longer if needed to present necessary evidence or relevant project information.
4. Disability Accommodation: If a person requests a time extension as a disability accommodation, the Presiding Officer may extend the time as is reasonable for the speaker to convey the information.
5. Time Allocation if Many Commenters: If there are more than ten (10) speakers with the potential to extend public comment beyond 30 minutes, the Presiding Officer is authorized to establish a different time limit for public comments in order to allow equal access for all those wishing to address the City Council.
6. Yielding Time: Speakers may not “yield” a portion of their allotted time to others.

H. Speakers Location

Speakers shall address the Council from the podium provided for that purpose, and may not enter the “well” in front of the Council dais or other area during their comment. Any written materials or items to be submitted or shown to the Council shall be given to the City Clerk, who will distribute them to Council.

I. Repetitious or Dilatory Comments Discouraged.

In order to expedite matters and to avoid repetitious presentations, the designation of a spokesperson is encouraged. Whenever any group of persons wishes to address the Council on the same subject matter, those persons are encouraged to designate a spokesperson to address the City Council. With the consent of the City Council, the Presiding Officer may extend the time allocation for a designated spokesperson.

In accordance with the Brown Act, unduly long or repetitious comments may be ruled out of order by the Presiding Officer. Disruptive speech will also be limited in accordance with law.